

Bill No. SB 1448

Barcode 764980

Proposed Committee Substitute by the Committee on Governmental Oversight and Productivity

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; creating an exemption from
4 public-records requirements for e-mail
5 addresses of individuals which are aggregated,
6 compiled, or created in a list by an agency are
7 exempt; providing exceptions; providing for
8 retroactive application; providing for future
9 legislative review and repeal of the exemption
10 under the Open Government Sunset Review Act;
11 providing a finding of public necessity;
12 providing an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Paragraph (g) is added to subsection (5) of
17 section 119.071, Florida Statutes, to read:

18 119.071 General exemptions from inspection or copying
19 of public records.--

20 (5) OTHER PERSONAL INFORMATION.--

21 (g)1. The e-mail addresses of individuals which are
22 aggregated, compiled, or created as a list by an agency are
23 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution.

25 2. An agency may provide e-mail addresses in the
26 aggregate, in a compiled format, or in a list to an agency in
27 the furtherance of its lawful duties and responsibilities.

28 3. This exemption does not apply to the work e-mail
29 addresses of officers or employees of an agency or other
30 governmental entity.

31 4. Any person may petition a court of competent

jurisdiction for an order for the release of e-mail addresses of individuals which have been aggregated, compiled, or created as a list by an agency. The court may order the release of those e-mail addresses for good cause. Good cause does not include use of e-mail addresses for bulk or mass e-mailing purposes or for commercial solicitation.

5. This exemption is remedial in nature and applies retroactively to e-mail addresses of individuals aggregated, compiled, or created as a list by an agency on, before, or after July 1, 2006.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to exempt from public-records requirements the e-mail addresses of individuals which are aggregated, compiled, or created as a list by an agency. During the last two decades, agencies have increased their reliance upon computers and the Internet to disseminate information and to provide service to the public. Agencies often use their agency websites to post important notices that provide information to Internet browsers. While the publication of information on agency websites is important, such notice depends upon regular browsing by users to ensure timely notification. As a result, agencies may offer to provide direct notice by e-mail to individuals who provide the agency with their e-mail addresses. Direct notification of individuals by an agency through e-mail provides consistent, timely notice of public meetings and local events that individuals may wish to attend. Direct e-mail notification also permits an agency to provide

1 individuals with information regarding changes to ordinances
2 and regulations, the issuance of important health advisories,
3 new or updated agency publications, and much other important
4 information, possibly tailored to the specific needs or
5 interests of that individual. In addition to being a more
6 direct, personal and consistent form of notification, the
7 dissemination of notices and information through e-mail is
8 less expensive than traditional forms of contacting citizens.
9 Thus, the use of the Internet and direct e-mail by agencies
10 has obvious public benefits and assists agencies in the
11 effective and efficient performance of their functions and
12 duties.

13 The Legislature notes, however, that some individuals
14 are unwilling to provide their e-mail addresses to agencies
15 because these e-mail addresses may be obtained by "spammers"
16 worldwide. While the Legislature acknowledges and respects the
17 important role of commerce in our society, the Legislature
18 also notes that spamming has reached epidemic proportions.
19 Spam can be differentiated from solicitation and advertisement
20 through the regular mail because spam may contain computer
21 viruses that disable or destroy computers. Further a recipient
22 of spam may discover to his or her surprise that opened e-mail
23 from a spammer has installed computer programs that have
24 stolen the passwords to on-line banking accounts, on-line
25 stock trading accounts, and debit or credit card accounts. In
26 the worst case scenario, such a program may even steal the
27 identity of the e-mail recipient. In a state with a large
28 number of elderly such as Florida, spam could also be used to
29 target the elderly for various Internet scams. Thus, to a much
30 greater degree than traditional forms of mailed
31 advertisements, spam may result in significant financial harm

1 to a recipient. Further, given the ease and rapidity with
2 which e-mail addresses can be bought, sold and traded among
3 spammers worldwide the potential for harm increases many fold,
4 as well as invades the privacy of the persons whose e-mail
5 addresses are scattered so widely. While there are programs
6 that may block spam, such programs may not always be
7 effective. Thus, persons with knowledge that their e-mail
8 address will become available to spammers if provided to an
9 agency may choose it is wiser not to provide it. The
10 unfortunate result of such a decision is that a cost-effective
11 and efficient method for an agency to provide direct, personal
12 and timely notice to individuals is diminished.

13 The Legislature must strike a balance between
14 encouraging efficient and effective public notice through
15 direct e-mail to individuals by agencies, with the concerns of
16 individuals that spammers can obtain their e-mail addresses
17 from agencies and invade their privacy and possibly cause them
18 economic harm. By making e-mail addresses of individuals that
19 are aggregated, compiled, or created as a list by an agency
20 exempt, the primary and most economical method by which
21 spammers can obtain e-mail addresses of individuals is
22 eliminated, while still preserving public oversight over the
23 content and addresses of individual e-mails sent by or
24 received by an agency. While the address of an individual may
25 be obtained from a single e-mail, it is far less likely that
26 spammers would find it efficient or economical to attempt to
27 compile a list of e-mail addresses of individuals by
28 collecting one e-mail at a time. Thus, a primary cause for
29 individuals refusing to provide individual e-mail addresses to
30 an agency is eliminated, while still preserving public
31 oversight. Further, the Legislature notes that additional

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1 protection of public oversight is provided by permitting any
2 person to petition a court for an order releasing individual
3 e-mail addresses that are aggregated, compiled, or created as
4 a list by an agency. There may be situations in which it is
5 appropriate for a court to release such information to ensure
6 public oversight. Further, the Legislature notes that this
7 exemption expressly excludes the work e-mail addresses of
8 public officers and employees because these e-mail addresses
9 should be available to the public in bulk form in order to
10 contact multiple agency officers and employees if necessary
11 and should not be protected. Therefore, for all the foregoing
12 reasons, the Legislature finds that it is a public necessity
13 to exempt e-mail addresses of individuals which are
14 aggregated, compiled, or created as a list by an agency.

15 Section 3. This act shall take effect July 1, 2006.
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